

IN THE UNITED STATES DISTRICT COURT.  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL 02-2917 (JEI)

PATRICK BRADY, SALLY YOUNG,  
HOWARD HOLLANDER, THEODORE CASE,  
AND MICHAEL FINUCAN, individually  
and on behalf of all others  
similarly situated,

Plaintiffs,

V.

VOLUME 9  
TRIAL TRANSCRIPT

AIR LINE PILOTS ASSOCIATION,

Defendant.

CAMDEN, NEW JERSEY  
JUNE 22, 2011

B E F O R E: HONORABLE JOSEPH E. IRENAS  
UNITED STATES DISTRICT JUDGE

## A P P E A R A N C E S :

TRUJILLO, RODRIGUEZ & RICHARD  
BY: NICOLE M. ACCIONE, ESQ.  
AND: LISA J. RODRIGUEZ, ESQ.

AND  
GREEN JACOBSON, P.C.  
BY: ALLEN PRESS, ESQ. (MO. BAR)  
AND: JOE D. JACOBSON, ESQ. (MO. BAR)  
For the Plaintiffs.

ARCHER GREINER  
BY: STEVEN FRAM, ESQ.  
AND  
KATZ & RANZMAN  
BY: DANIEL M. KATZ, ESQ.  
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.  
IN-HOUSE COUNSEL FOR ALPA.

1                   Pursuant to Section 753 Title 28 United States  
2 Code, the following transcript is certified to be an  
3 accurate record as taken stenographically in the  
4 above-entitled proceedings.

5                   S/        LYNNE JOHNSON

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10                  Lynne Johnson, CSR, CM, CRR  
11                  Official Court Reporter

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LYNNE JOHNSON, CSR, CM, CRR  
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LAWRENCEVILLE, NJ 08648

1                   THE COURT: Good morning, everybody.

2                   MR. KATZ: Good morning, Judge Irenas.

3                   THE COURT: Good morning to some of you. Everyone  
4 please be seated.

5                   Okay. I will make some rulings here.

6                   I received Mr. Press's response to the objections  
7 that ALPA had which I previously received in another email,  
8 and he made a list of the things he was going to withdraw,  
9 and those things that he was going to stick to his guns, and  
10 offer.

11                  MR. PRESS: Correct.

12                  THE COURT: So get your pencils outright now. I  
13 will tell you my ruling. If either of you want to argue it,  
14 or ask for an explanation, just do so. Otherwise, I am just  
15 going to go through, I am not going to comment where it is  
16 withdrawn, I just marked my copy as withdrawn. I assume you  
17 know that already.

18                  MR. PRESS: Yes.

19                  THE COURT: You don't need me to comment on that.  
20 I am only going to deal with the issues where it is not going  
21 to be withdrawn. Okay.

22                  The first is page 52, line 3, to 56, line 14. And  
23 I am overruling the objection to that.

24                  Okay. Next is page 70, line 18, to 71, line 1. I  
25 am overruling the objection to that.

1                   71, 20, to 72, 2, I am overruling the objection to  
2 that.

3                   For 99, 23, to 100, line 8, I am overruling the  
4 objection but I am sustaining the objection to page 100, line  
5 9, to 101, line 10.

6                   I am sustaining the objection to 100, line 9, to  
7 101, line 10.

8                   On the next objection I am also splitting it. 137,  
9 line 2, to line 8, is, I am overruling the objection. But I  
10 am sustaining the objection to 137, line 9, to line 16. 137,  
11 line 9, to 137, line 16.

12                  One 87, line 19, to 189, line 2, I am overruling  
13 the objection. Page 215, line 7, to 216, line 11, I am  
14 overruling the objection.

15                  218, lines 3 to 9, I am sustaining the objection.

16                  By the way, the next one which is line 251, 20, to  
17 22, it is being withdrawn but I think line 23 goes out as  
18 well. I think it should be not 20 to 22, but 20 to 23. That  
19 is page 251. I don't know if that is just a typo. Is that  
20 right?

21                  MR. PRESS: Yes.

22                  THE COURT: Okay. The next is page 255, line 17 to  
23 19, I am sustaining the objection.

24                  Page 268, line 8 to 10, I am sustaining the  
25 objection.

1                   Page 269, line 5 to 9, I am sustaining the  
2 objection.

3                   Excuse me. Page 269, line 18 and 19, lines 18 and  
4 19, I am overruling the objection. They can stay. However,  
5 I don't see an objection to it, but I think page -- let me  
6 just look at this, 272 -- I just can't tell. 272, line 20 to  
7 24 should be out. Now, they may already be out. I couldn't  
8 tell on my copy. They were marked in yellow that somebody  
9 put --

10                  MR. PRESS: It is out, Judge.

11                  THE COURT: It should be, not only is it out, it  
12 should be out. And I also had 273, lines 1 to 6, should be  
13 out.

14                  MR. PRESS: They are.

15                  THE COURT: Again, my marked up copy, this wasn't  
16 clear whether they were out or not. But they were, as I  
17 said, they should be out.

18                  Now, 273, line 7, to 274, line 3, I am overruling  
19 the objection. That can stay in. -- well, no. I am sorry.  
20 273, 7 to 15 will be in. 273, line 16 to 274, line 3 will be  
21 withdrawn. But the part that is being offered, I am  
22 overruling the objection I think that covers it all.

23                  MR. PRESS: Can you clarify the ruling on page 269,  
24 line 19 to 270, line 3.

25                  THE COURT: I am overruling the objection. 2 --

1                   MR. KATZ: I have a question. We had one item to  
2 add for completeness. Have you gotten to that? Page 150.

3                   THE COURT: It was in the initial submission.

4                   MR. KATZ: Yes, sir.

5                   THE COURT: Let me look at that. For some reason I  
6 don't have notes on that. Let me just look at it.

7                   As a general matter, Mr. Katz, you had marked on  
8 this original item, the original draft I had gotten from you,  
9 an a lot of items.

10                  MR. KATZ: We have withdrawn those based on your  
11 prior rulings.

12                  THE COURT: My position on those generally, this is  
13 Rindfleisch, he worked for ALPA. Not only did he work for  
14 ALPA, I think he was in the organizing or the membership, I  
15 don't know what they call the division that dealt with  
16 membership campaigns, and those kind of things.

17                  MR. KATZ: Correct.

18                  THE COURT: You want to call him as a witness, you  
19 know, and have him tell his story, that is fine with me. But  
20 he had a lot of contact with American pilots, at some point  
21 he was made aware of the cards, memos come, very apparently  
22 substantial traffic in emails from American pilots to  
23 Rindfleisch. He had some contact with superiors within his  
24 own organization, he either forwarded emails to them, we  
25 don't know, his memory was somewhat cloudy on that issue.

1       But I tended not to add, I tended to, in this case, I thought  
2       I was going to leave it to you to call him and have him  
3       testify as to whatever you want him to testify to, and then  
4       the plaintiffs could cross examine him.

5                    MR. KATZ: Just one page.

6                    THE COURT: I am going to look at it right this  
7       second.

8                    THE COURT: I did review this section. It falls  
9       rather squarely within the comments I just made. The line of  
10      questioning here, and I guess it was Mr. Press who was doing  
11      the questioning, the, apparently, ALPA has hard goods,  
12      stickers, pens, buttons, things like that, that they will  
13      give out for use in an organizing campaign. If they want to  
14      put various things on their cars, bumper stickers and pens  
15      and key chains, and goodies like that, and the question was  
16      asked of Rindfleisch as to whether he had supplied those, and  
17      his series of answers to the questions seem to have been he  
18      was making some distinction between a card campaign where he  
19      wouldn't supply those things, and possibly a merger campaign.  
20      I don't know.

21                   I am not sure, he was making some kind of thing.  
22      The bottom line is he denied having supplied any of that  
23      stuff. Or at least he didn't recall doing it. Let me put it  
24      that way. He didn't recall it. That may be. That may be  
25      something you want to bring out if he is here on the stand is

1 that he didn't supply those kind of things, and whatever the  
2 reason was that he didn't supply them.

3                   But I am not going to, for the very reasons I just  
4 articulated it, and why, you know, I don't think that makes  
5 any prior answer of his misleading. Those I would put, even  
6 if I thought there there were things that made a prior answer  
7 misleading and you left out something that was needed to  
8 understand the entire answer, so the jury wouldn't be misled,  
9 that would be one thing.

10                  But I don't think the sections being offered by the  
11 plaintiff -- it is part of their case but I don't think the  
12 answers are particularly misleading.

13                  MR. KATZ: That was our intent, to clarify earlier  
14 answers.

15                  THE COURT: I understand. And I mean in one sense,  
16 the various things, marked, at least my initial draft here,  
17 you know, they weren't misleading, they were just, they gave  
18 a fuller and completer picture but I don't think it is the  
19 plaintiff's obligation in an adverse deposition, in deposing  
20 an adverse party, to put every aspect of that person's  
21 testimony into the record. You can't mislead, but if line  
22 ten or eleven changes the answer, that is different from  
23 wanting to put the whole case in, the whole story in. This  
24 is your witness, he is welcome here in court and he can  
25 testify, and whatever he says he says, the jury will hear it.

1 But no, I am not going to allow that.

2 MR. KATZ: That is fine, your Honor. We can deal  
3 with that in ALPA's case in chief.

4 THE COURT: Yeah. Particularly Rindfleisch, I  
5 can't believe there is another witness who might be, again, I  
6 don't know what your plans are but he might be a central  
7 witness.

8 MR. KATZ: He is still an employee of ALPA's and he  
9 is on our witness list.

10 THE COURT: Is he still?

11 MR. KATZ: He is still an employee of ALPA's and he  
12 is on our witness list.

13 THE COURT: All right. It is 25 after. Anything  
14 else?

15 MR. KATZ: No, sir. Nothing from ALPA, your Honor.

16 THE COURT: Anything from the plaintiffs.

17 MR. PRESS: No. Your Honor, well, yes, there is.  
18 There is one exhibit in the first video of Mr. Rindfleisch  
19 that hasn't been admitted yes, exhibit P 29 which we would  
20 offer.

21 THE COURT: Let me --

22 MR. PRESS: It is a February 25, he email --

23 THE COURT: P 29. Is that going to be offered? Of  
24 course it is. You are offering it in evidence.

25 MR. PRESS: Yes.

1                   THE COURT: Any objection?

2                   MR. KATZ: No objection.

3                   THE COURT: Okay. That is in evidence.

4                   Okay. Forget I am here. I am going to do some  
5 housekeeping.

6                   (Pause)

7                   THE COURT: One thing. Rindfleisch one, his 2006  
8 dep, you are not reading from?

9                   MR. PRESS: We are are, now.

10                  THE COURT: Later?

11                  MR. PRESS: We are playing that first.

12                  THE COURT: Have we covered everything in there?

13                  MR. PRESS: Yes, we have.

14                  THE COURT: I only dealt with two last night.

15                  MR. KATZ: Weren't there two objections on that?

16                  MR. PRESS: They were ruled on Monday.

17                  THE COURT: You pulled them?

18                  MR. PRESS: Yes.

19                  THE COURT: Yes.

20                  MR. PRESS: The objections were overruled.

21                  THE COURT: I ruled on them.

22                  MR. PRESS: Yes, you did.

23                  THE COURT: Okay. That is fine.

24                  MR. PRESS: Your Honor.

25                  THE COURT: Yes, sir.

1                   MR. PRESS: We removed a lot of stuff that was  
2 originally designated in the first Rindfleisch deposition.  
3 We have shortened it substantially. And I don't know if I  
4 sent you the lines that we were deleting or on or not.

5                   THE COURT: Well, the answer is, don't worry  
6 because I follow it and make my notes. I don't rely on  
7 anybody, this case has been so many changes, that when I am  
8 keeping the record so I can read it in for the appellate  
9 court, if there is going to be an appellate court, I take it  
10 not from any list anybody has given me. I actually follow it  
11 in the transcription. As it is being played.

12                  MR. PRESS: Okay.

13                  THE COURT: So even if I didn't mark it on some  
14 other document you gave me, or on the transcript itself that  
15 you have given me, I always, in all cases, follow it as it is  
16 being given.

17                  MR. PRESS: Okay.

18                  THE COURT: So I don't want there to be any mistake  
19 as to what the record is, and all the things that are  
20 submitted, they are really not part of the record and this  
21 way if I take it down and I am listening to it and I relay it  
22 to my court reporter what I saw played, I am satisfied with  
23 that.

24                  MR. PRESS: I just didn't want to create any  
25 confusion.

1                   THE COURT: No, you haven't been. As I say, on  
2 that score, I, from day one, I have relied on what I actually  
3 hear in the courtroom.

4                   MR. PRESS: The only other thing, Judge, we would  
5 have is we will need a short break to edit the second  
6 Rindfleisch deposition according to your orders this morning.

7                   THE COURT: Yes. No problem.

8                   MR. PRESS: All right.

9                   THE COURT: If I forget, remind me.

10                  MR. FRAM: Good morning.

11                  THE COURT: Yes, Mr. Fram. You got your sunglasses  
12 off now?

13                  MR. FRAM: I do, your Honor.

14                  THE COURT: I saw some shadowy figure walking into  
15 the courtroom.

16                  MR. FRAM: They weren't very helpful in the  
17 downpour I got caught in.

18                  One question. There was an open question about  
19 whether Mr. Pastor will be here to testify.

20                  THE COURT: He said he didn't know. There were two  
21 possible witnesses. Mike Day and Captain Pastore, were two  
22 possibilities, and he thought he was going to call Captain  
23 O'Day?

24                  MS. RODRIGUEZ: Captain Day.

25                  THE COURT: Captain Day, is it Day?

1 MS. RODRIGUEZ: Just Day, yes.

2 THE COURT: Captain Day. O'Day sounds nice, I like  
3 it.

4 THE COURT: Captain Day, and Captain Pastore. What  
5 is the story?

6 MR. FRAM: I was hoping for an update so we know  
7 who would be here.

8 THE COURT: Is Pastore going to testify?

9 MR. PRESS: Not today. And Judge, most, almost all  
10 the evidence that we would have presented through Captain  
11 Pastore has already been admitted with one --

12 THE COURT: I am taking no position.

13 MR. PRESS: There is an open issue. The financial  
14 condition of TWA is something that he was going to testify  
15 to. But you have ruled that that is irrelevant and out of  
16 the case.

17 So we would be inclined not to present him at all.

18 THE COURT: Well, when I said irrelevant, the  
19 perception of the union as to what that condition was might  
20 be relevant, as distinct from the fact of it. I mean, it is  
21 not like you would call a witness who would then go through  
22 all the public records of TWA and then express an opinion, it  
23 is viable for six months, viable for nine months, viable  
24 forever. That I considered irrelevant.

25 But I think I made it clear that I did consider it

1 relevant that if ALPA, for instance, there was a discussion  
2 between ALPA, saying this company is a good strong company,  
3 it can last forever, the two of them said this is a terrible  
4 company, and you know, it doesn't have three months of life  
5 left in it, well, that is another. Also the perception of  
6 the pilots themselves, there was direct evidence of how the  
7 pilots perceive it, not, not as an expert, not as they come  
8 in and say, remember what was her name?

9 MR. PRESS: Sherry Cooper.

10 THE COURT: She is there live, I didn't plan for  
11 this, I didn't plan for that. We were going to do the  
12 concession from this union, concession from that union,  
13 concession from the mechanics, there was going to be an  
14 unnamed investor or a pool of investors who were going to  
15 come in, George Soros, and I think she said, he expressed an  
16 interest.

17 That is all very fine and good, but unless somebody  
18 in either the pilot group, meaning the MEC or pilots -- or in  
19 the ALPA, failing some managers, have perception, you know,  
20 or were studying it or reached their own conclusion, you  
21 know, I didn't say she was wrong or right. I just said it  
22 was not relevant.

23 So that was the distinction I made. I think I made  
24 that on the record. If I didn't make it on the record, I am  
25 making it on the record now.

1                   MR. FRAM: I think you did.

2                   The other point is after March 12 when Judge W  
3 alsh approved the American acquisition.

4                   THE COURT: Judge Walsh's determination is part of  
5 the record. We know both sides absorbed that with great  
6 interest. That is different. That is an external fact, not  
7 -- the accuracy of the conclusion, the fact that he made that  
8 conclusion.

9                   MR. PRESS: Judge, they offered that clearly for  
10 the truth of it. Nothing besides that. Not somebody's  
11 perception. They have offered that for the truth, and quite  
12 honestly, if it is going to stay in the record for the truth  
13 of --

14                   THE COURT: I would have no problem with the  
15 pilots, among themselves, having said this is not true, we  
16 are going to appeal it, we think this was inaccurate,  
17 anything like that, I wouldn't keep out, because it goes to  
18 their perception of what he said. And their reaction to it.

19                   But I thought that sort of, I don't want to say  
20 deus ex machina, but things outside, even though, I am sure  
21 one could today just going on the computer, find a lot of  
22 financial information about TWA as it existed then. And for  
23 all I know, people could reach different conclusions as to  
24 what, one might say this is one expert might say this is a  
25 company, with a little creativity, they used to say,

1 reasonable use of credit, is it viable, is an even viable  
2 entity and another expert says no, nothing is going to save  
3 this company at that time.

4 MR. PRESS: Can I ask a question?

5 THE COURT: Yes.

6 MR. PRESS: If defendant's witnesses are allowed to  
7 testify that they perceived TWA to be weak financially and on  
8 the verge of collapse and in a free-fall bankruptcy, if that  
9 was their perception, why aren't we allowed to say factually  
10 that is incorrect through witnesses who have firsthand  
11 knowledge?

12 THE COURT: What if it was incorrect?

13 MR. PRESS: What?

14 THE COURT: This is a breach of duty of fair  
15 representation.

16 MR. PRESS: That is our point.

17 THE COURT: Well, let me put it this way. It may  
18 well be that if they had a perception, it was so patently  
19 false, you can come in and show it was false, I have to look  
20 the an it in context. I haven't heard anything like that, or  
21 anything close to that.

22 MR. PRESS: I am getting the sense this issue is  
23 probably more rebuttal type evidence.

24 THE COURT: It may be. I don't want to make any  
25 hard and fast rules. I have a concept. Look, they said we

1 believe the moon is made of green cheese. We are very sure  
2 of that. That is what we are basing our actions on, the  
3 green cheeseness of the moon, I would let you come in and  
4 prove that the moon was not made of green cheese but  
5 limberger, the answer is of course I would. The belief  
6 system is a coverup for the truth, a willful disregard of  
7 the truth , but you know, talking about financial condition  
8 of TWA, clearly this was a troubled airline. I mean, even  
9 witnesses favorable to you -- Gordon was her name?

10 MS. RODRIGUEZ: Cooper.

11 THE COURT: Ms. Cooper's, even her own testimony  
12 bespeaks of an airline in big trouble, and she was trying to  
13 extract tens of millions of concessions by, well, at least  
14 three different groups. Flight attendants, the IAM folks and  
15 the pilot folks. And talking about Soros, and some investors  
16 coming in, you look at them together you are looking at a  
17 troubled institution. By her own testimony, which you were  
18 going to offer. So, and I said look, the fact that she had a  
19 belief that if she could put some package whose terms were  
20 not even clear at this point together, that she might be able  
21 to save the airline, the last time TWA tried that they wound  
22 up with Carl Icahn. You know, whether George Soros would be  
23 better? I don't know. I don't want to say anything nasty  
24 about Mr. Soros. I know who he is and what he does, whether  
25 he would have been the savior of TWA or its undertakers, I

1 have no idea.

2 The answer is, also, you are right, to the extent  
3 he could open doors for you --

4 MR. PRESS: We will try to keep those doors closed.

5 THE COURT: That would let you, you know, drive a  
6 MAC truck through them, or fly a wide body through them,  
7 either one.

8 MR. FRAM: Your Honor, my question about Pastore  
9 was primarily for planning purposes. We need to know what  
10 witnesses to have lined up. I would like to know if is he  
11 going to come up.

12 MR. PRESS: In light of what we discussed this  
13 morning, we will reserve him as rebuttal issue.

14 THE COURT: If that is the area he basically was  
15 going to testify to, that may be the smarter move.

16 MR. JACOBSON: Yes.

17 THE COURT: I mean, sort of from a strategic  
18 attack, the best point to put it, the answer is in the next  
19 few days you don't have to worry about preparing the cross  
20 examination.

21 MR. PRESS: Our next live witness is Captain Day  
22 who has nothing to do with Rindfleisch. I asked if he could  
23 sit in the courtroom instead of being sequestered in the  
24 hallway.

25 MR. FRAM: What is the question?

1                   MR. PRESS: Can Mike Day sit in the courtroom  
2 during the playing of the tape?

3                   MR. FRAM: No objection to that.

4                   MR. PRESS: I won't ask him any questions about  
5 Rindfleisch.

6                   MR. FRAM: No objection.

7                   THE COURT: We will let the captain have a seat.  
8 Bring the jury in.

9                   (The jury enters the courtroom.)

10                  THE COURT: Good morning, everybody. Please be  
11 seated. I will ask Mr. Press to continue with his next  
12 witness.

13                  MR. PRESS: Our next witness is Ron Rindfleisch via  
14 video. He was deposed twice, the first time in '06 in  
15 Washington, and another time in 2008, again in Washington,  
16 D.C. Ron Rindfleisch.

17                  (Videotape of Ron Rindfleisch dated November 13,  
18 2006, played).

19                  MR. PRESS: Your Honor, that is it for the first  
20 deposition of Mr. Rindfleisch.

21                  THE COURT: Give me a second.

22                  Let's give the jury a break as we prepare for the  
23 second one. Okay.

24                  Ladies and gentlemen, do not discuss the case among  
25 yourselves. Keep an open mind until you have heard all the

1 evidence. All rise.

2 (Jury leaves the courtroom).

3 THE COURT: Now, Mr. Press, first you put P 29 in  
4 evidence. Are there any other documents.

5 MR. PRESS: No.

6 THE COURT: They are all taken care of.

7 MR. PRESS: Yes.

8 THE COURT: Let me read what I got out of the, out  
9 of what was read into the record from the November 13, '06  
10 deposition of Ron Rindfleisch.

11 Page 5, line 7, to line 12.

12 Page 6, line 6 to page 10, line 16.

13 I may have been slightly over inclusive there, but  
14 nothing harmful.

15 Page 23, line 1, to page 25, line 22.

16 Page 29, line 10 to 31, line 11.

17 Page 33, line 2, to page 34, line 1. Page 37, 6,  
18 to page 40, line 8. Page 51, line 17, to page 56, line 5.  
19 Page 56, line 6, to 56, line 22.

20 Page 63, line 10, to page 64, line 2. Page 74,  
21 line 1, to 76, line 20.

22 Page 90, line 7, to page 90, line 20. Page 98,  
23 line 12, to page 99, line 22. Page 103, line 5, to 104, line  
24 14.

25 Page 105, line 4, to page 105, line 12.

1                   Page 105, line 14, to 106, line 13.

2                   110, line 12, to 110, line 20. Page 111, line 1,

3 to page 1 11, line 11.

4                   Page 120, line 21, to page 123, line 15. Page 133,

5 line 7, to page 134, line 20.

6                   Page 136, line 18, to page 139, line 8.

7                   Page 141, line 1, to page 143, line 8.

8                   Page 149, line 4, to page 150, line 8.

9                   Page 157, line 19, to page 159, line 8.

10                  Page 159, line 12, to page 165, line 17.

11                  Page 171, line 12, to page 181, line 4.

12                  Page 182, line 1, to page 185, line 3.

13                  Page 195, line 20, to page 198, line 21.

14                  Page 202, line 9, to page 203, line 10.

15                  Right. Mr. Katz, okay?

16                  MR. KATZ: ALPA has no corrections, your Honor.

17                  THE COURT: Is that okay, Mr. Press.

18                  MR. PRESS: Yes, it is, Judge.

19                  THE COURT: Okay. Let's take about a ten-minute

20 break to give everybody a breather, and then we will resume

21 with Rindfleisch, 2, when we return.

22

23                  (Recess)

24                  (Jury enters the courtroom.)

25                  THE COURT: Mr. Press, you may continue.

1 MR. PRESS: We would show the second Rindfleisch  
2 deposition. Before doing that, Judge, I would like to move  
3 into admission the email binders exhibits 147.

4 THE COURT: P.

5 MR. PRESS: Binders P-147 and P-148.

6 THE COURT: Any objection, Mr. Katz.

7 MR. KATZ: ALPA does not object to those exhibits.

8 THE COURT: P-147 and 148 in evidence.

9 Before you start the tape, let me make sure I get

10 them.

11 MR. PRESS: There were two other exhibits  
12 identified in the video, Judge, P-146 --

13 THE COURT: Let me get these first.

14 (Pause)

15 THE COURT: Okay, what are the next ones?

16 MR. PRESS: P-146 and 149.

17 THE COURT: Are you offering those?

18 MR. PRESS: We are.

19 THE COURT: Any objection?

20 MR. KATZ: No objection.

21 THE COURT: P-146 and 149 in evidence. Again,  
22 before you play them get me get them.

23 THE COURT: Is that all the exhibits.

24 MR. PRESS: Yes.

25 THE COURT: You can now proceed with the deposition

1 of August 27, 2008, of Mr. Rindfleisch.

2 MR. PRESS: Thank you, your Honor,

3 (Videotape played)

4 MR. PRESS: This would be a good place for a break  
5 as far as subject matter goes.

6 THE COURT: Okay. Ladies and gentlemen, we will  
7 take a break. Do not discuss the case among yourselves.  
8 Keep an open mind until you have heard all the evidence.

9 All rise.

10 (The jury leaves the courtroom.)

11 .

12 THE COURT: From the deposition of Ron Rindfleisch  
13 on August 27, 2008, exhibits 146, 1 47, 1 /TPRA\*EULT, 149,  
14 P-146 through 149 are put in evidence. The following  
15 extracts were played for the jury. Page 7, line 21 to page  
16 8, line 24.

17 Page 9, line 7 to page 12, line 16.

18 Page 17, line 15, to 18.

19 Page 19, lines 15 through 23.

20 Page 20, lines 1 through 4. Page 20, line 17 to  
21 page 21, line 2.

22 Page 21, line 6, to line 19.

23 Page 24, line 2, to page 24, line 9.

24 Page 24, line 22, to page 26, line 3.

25 Page 27, line 10, to page thirty, line 15.

1                   Page 34, line 15, to page 37, line 17.  
2                   Page 37, line 21, to page 38, line 6.  
3                   Page 38, line 13, to page 39, line 11.  
4                   Page 49, line 18, to page 52, line 21.  
5                   Page 68, line 1818 through 21.  
6                   Page 69, line 13, to page 72, line 6.  
7                   Page 79, line 16, to page 83, line 6.  
8                   Page 84, line 17, to 20 on page 84.  
9                   Page 85, line 8, to page 86, line 22.  
10                  Page 88, line 19 to page 89, line 9.  
11                  Page page 89, 13, to 91, 18.  
12                  Page 93, line 7, to page 100, line 7.  
13                  Page 101, line 22, to page 102, line 9.  
14                  Page 126, line 11, to page 127, line 4.  
15                  Page 127, line 8, to page 128, line 21. Page 130,  
16 line 24, to page 131, line 1.  
17                  Page 131, line 6 to page 131, line 8.  
18                  Page 131, line 18, to page 133, line 22.  
19                  Page 134, lines 1 and 2.  
20                  Page 34, line 23 to page 137, line 8.  
21                  Page 139, line 15, to page 141, line 4.  
22                  Page 141, line 9, to page 141, 18, line 18.  
23                  Page 142, line 8, to page 142, line 19. Page 143,  
24 line 19, to page 146, line 16. Page 146, line 19, to page  
25 146, line 24.

1 Page 149, line 9, to page 149, line 24.

2 Finally, page 151, line 2, to page 151, line 19.

3 Is that okay, everybody?

4 MR. KATZ: No objections, your Honor.

5 MS. ACCHIONE: I don't think you included pages we  
6 played from 53, 54, and 55.

7 THE COURT: I have, the last one I have is 52, 21.

8 MS. ACCHIONE: We played from, continuing on.

9 THE COURT: Let me get to it.

10 THE COURT: Yeah, you did play --

11 MR. KATZ: 55, 21.

12 THE COURT: The last line was 55, 21.

13 MS. ACCIONE: That's correct.

14 THE COURT: I am trying to get the first line.

15      Would have been 52, line 3, page 52, line 3, to 55, 21.

16 MS. ACCHIONE: That's correct.

17 THE COURT: I am sorry. I don

18 Okay. Anything else?

19 MS. ACCHION

20 THE COURT: Okay.

21 All right. Let's

22 (Recess)

23 (The jury

24 THE COURT: Mr. Press, you may continue.

25 MB PRESS: Thank you

10.1007/s00332-010-9000-0

1 (Videotape of Ron Rindfleisch continues).

2 MR. KATZ: I object. We are going through the same  
3 thing.

4 THE COURT: Stop the machine. You are going  
5 backwards. I was at page 227, all of a sudden I am getting  
6 page 217.

7 MR. KATZ: We have seen it all right.

8 MS. ACCIONE: We had a technical glitch when we  
9 made the edit.

10 THE COURT: You had a technical glitch? Maybe you  
11 should tell me about that. You can't turn around and go  
12 backwards.

13 MS. ACCIONE: We are correcting it right now.

14 THE COURT: Tell me what you are reading now. I  
15 was going along fine. All of a sudden I looked up and I see  
16 you are seven pages back. Contact.

17 MS. ACCIONE: We should be starting at page 225 --  
18 no, 224, line 12.

19 THE COURT: You have already read 224, line 9. So  
20 you are picking it up at line 12.

21 MS. ACCIONE: That's correct.

22 THE COURT: 224, line 12. Okay.

23 (Videotape commences)

24

25 MR. PRESS: We are stopping it here.

1                   THE COURT: What line is that.

2                   MR. PRESS: 255, line 11. That finishes the whole  
3 dep?

4                   MR. PRESS: Yes.

5                   THE COURT: Okay.

6                   Ladies and gentlemen, we will take our last break  
7 of the day. I will see you in a few minutes. All rise when  
8 the jury leaves.

9                   (The jury leaves the courtroom.)

10                  THE COURT: Please be seated.

11                  From the lines from the second involve Rindfleisch,  
12 8/27, 08. I will continue what I consider being read in.

13                  On one or two occasions I was having a little  
14 problem following so interrupt me if you think I don't have  
15 it right.

16                  154, line 22, to 155, line 20.

17                  156, line 21, to 158, line 24.

18                  159, line 16, to 160, line 3.

19                  160, line 11, to 164, line 7.

20                  The next thing I have is just line 9, 154.

21                  MS. ACCIONE: It is actually line 10.

22                  THE COURT: Line 9 and 10.

23                  MS. ACCIONE: No, just line 10.

24                  MR. KATZ: That's correct.

25                  THE COURT: Just one line. Okay.

1 164, line 10.  
2 165, line 7. To 168, line 6.  
3 174, line 3, to 175, line 4.  
4 175, line 15, to 18. Line 175, 24, to line 177, 6.  
5 Line 181, 19 -- sorry. Page 181, line 19, to 184,  
6 12.  
7 Page 184, 13, to page 185, 12.  
8 Page 185, 16, to 187, 23.  
9 188 -- to 188, 23. Then 189, lines 4 to 6.  
10 Now, the next one, I start at 192, line 9, but I  
11 couldn't get the ending. Line 9 to what?  
12 MS. ACCIONE: 194, line 1.  
13 THE COURT: 194, line 1. So 192, line 9, to 194,  
14 line 19.  
15 Then 197, line 6, to 199, line 22.  
16 204, line 12, to 207, line 4.  
17 207, line 10, to 208, line 23.  
18 Page 213, line 1, lines 1 to 6.  
19 Page 213, line 13, to page 214, line 14.  
20 Page 215, line 7, to page 216, line 11.  
21 Page 217, lines 3 to 9.  
22 Page 217, line 10 to page 218, line 2.  
23 Page 218, line 10 to page 224, line 9.  
24 Page 224, line 12, to 226, line 11.  
25 Page 226, line 14, to page 229, line 1. Page 230,

1 lines 2 to 22.

2 Page 231, line 7 to page 232, line 10.

3 Page 232, line 19, to page 235, 8.

4 Page 235, 12, to 237, 15.

5 Page 237, 20, to 241, line 22.

6 249, line 8, to 2 51, line 3.

7 And the last entry I have is 251, line 24, to 255,  
8 line 11.

9 Okay.

10 MS. ACCIONE: That's correct.

11 THE COURT: Is that correct?

12 MR. KATZ: Yes, your Honor.

13 THE COURT: Okay. Mr. Press, who is next?

14 MR. PRESS: Mike Day.

15 THE COURT: Who or what is next?

16 MR. PRESS: Mike Day.

17 THE COURT: Okay. It will take, we will take a  
18 ten-minute break. Then we will resume with Mike Day.

19 (Recess)

20 (The jury enters the courtroom.)

21 THE COURT: Mr. Press.

22 MR. PRESS: Our next and last witness is Michael  
23 Day, who we would like to call.

24

25

1                   MICHAEL DAY, sworn.

2                   DIRECT EXAMINATION.

3                   BY MR. PRESS:

4 Q.    Mr. Day, where do you live?

5 A.    I live in I live in Cedar Key, Florida.

6 Q.    What part of Florida is that?

7 A.    That is by Gainsville, about 70 miles to the west, out  
8 in the Gulf of Mexico.

9 Q.    What is your profession currently?

10 A.   I am currently retired. I am a part time flight  
11 instructor, part time charter pilot. Once in a while I get  
12 dragged into part time law.

13 Q.    Part time law?

14 A.    Yes.

15 Q.    You are a retired pilot. Well, semi retired pilot?

16 A.   Semi retired, retired airline pilot.

17 Q.    What airline did you retire from?

18 A.   Retired from TWA slash America in 2005, after flying for  
19 39 years.

20 Q.    What was the highest rank that you achieved as an  
21 airline pilot?

22 A.   I was a 767 captain, check airman, line instructor.

23 Q.    Captain Day, can you tell us from the beginning of your  
24 flying career, and I may interrupt you, I am sure I will as  
25 you go through.

1 Start in the beginning and tell us about your  
2 flying career?

3 A. Okay. I started out, I graduated from college in St.  
4 Louis with a degree in aeronautical engineering. Next day I  
5 drove to Kansas City and was fortunate enough to start  
6 flying.

7 In those days we were hired as pilot flight  
8 engineers, and I got trained on the Boeing 727.

9 Q. What airline?

10 THE COURT: Excuse me. Do you have a private  
11 license before then? While you were at college did you get a  
12 private license?

13 THE WITNESS: Yes, your Honor.

14 THE COURT: They didn't hire you cold, you were  
15 already a licensed pilot?

16 A. I had a wopping 220 hours.

17 THE COURT: Okay. That is 80 or 90 more than I  
18 had.

19 Go ahead.

20 Q. What year are we in right now?

21 A. We are in December of 1966.

22 Q. And what airline are you working for?

23 A. That was with TWA.

24 Q. You went straight out of college to working for TWA?

25 A. In those days, that is what happened. Yes.

1 Q. Oh, okay. Take us through, I guess your career at TWA  
2 then?

3 A. Okay. We got checked out as flight engineers, still had  
4 flight engineers in 66, but we were considered pilot flight  
5 engineers because we were actually hired as pilots.

6 However, they had professional flight engineers, and  
7 they had their own union which was the FEIA, Flight Engineers  
8 International Association. So we all became part of that  
9 union. And right about that time is when ALPA started a card  
10 campaign to try to get us all into ALPA and they were  
11 successful, so we all became apprentice members of ALPA right  
12 about that time.

13 I then became based in Newark, and approximately a  
14 year later started flying out of no, Kennedy and LaGuardia as  
15 a first officer on the 727.

16 Q. As a first officer. What year is this now?

17 A. That would have been about '67.

18 Q. And when you were based in Newark did you live in New  
19 Jersey?

20 A. I did. I lived in Lyndhurst for a while, lived in  
21 Rutherford for a while.

22 Q. And how long were you based in the Newark, New York  
23 area?

24 A. It must have been close to seven, about seven -- well,  
25 actually I was, I lived there for up until I was 28, but I

1 was based in the New York, Newark, area, a good part of my  
2 career. I would say 15, 20 years, at that time.

3 Q. At some point you went to Rutgers law school, is that  
4 right?

5 A. Yes.

6 Q. Go ahead.

7 A. What happened was, I was advancing pretty fast. The  
8 next year I checked out of the 707 international first  
9 officer, and then the bottom fell out. TWA started  
10 furloughing 50 pilots a month.

11 When they got to about 600 of them I could see that  
12 either I was going to be unemployed or I was going to be very  
13 senior 727 flight engineer again since I had been demoted, so  
14 I picked something I thought I had at the least aptitude for,  
15 since I had math and science so I took the LSAT, which was  
16 the law school test to get in, and I got accepted to three  
17 out of the four schools and started at Seton Hall the next  
18 year. I went to Seton Hall.

19 Q. What year is this now, early seventies somewhere?

20 A. That would have been the early seventies, that's  
21 correct.

22 Q. Okay.

23 A. So I would try to fly on weekends primarily because I  
24 was still flying with TWA at the time, and I went a year and  
25 a half at Seton Hall, down town Newark, and then I

1 transferred over to Rutgers for the next year and a half.  
2 And during that period of time I started doing union work. I  
3 became the grievance chairman in the New York area for the  
4 pilots.

5 Q. I am sorry, Captain Day. Let me interrupt you. Did you  
6 ultimately obtain your law degree?

7 A. I did. I graduated, received a degree, and passed the  
8 New Jersey bar, become a member of the New Jersey bar, also  
9 became a member of this bar at the time, and at that time I  
10 had started a flight school, too, and kind of got burned out  
11 so wound up selling the flight school, and selling the house,  
12 and moving to Florida and starting to commute to New York. I  
13 was still flying out of New York.

14 Q. Go ahead.

15 A. I took the Florida bar, and became licensed to practice  
16 in Florida also, and started working part time as in-house  
17 counsel to a very large developer, as a matter of fact, he  
18 had led Dade County in condo sales the year before.

19 Q. What year is this that you moved to Florida?

20 A. Well, I was approximately 28, so that would have been  
21 '73 or '74.

22 Q. Okay. Have you lived in Florida ever since then?

23 A. Pretty much so. I lived in St. Louis for a brief stint  
24 when I wasn't commuting but for the most part I have always  
25 maintained a place in Florida. That is where I was born,

1 grew up.

2 Q. Would it be from the time you set up a law practice in  
3 Florida and you were flying at the same time were you always  
4 engaged in both professions?

5 A. Pretty much so. I, at some point I really started  
6 getting a little burned out. You can do it when you are  
7 younger but as you get older it gets a little more tire some,  
8 so as time went on, I stopped working for the developer and I  
9 became what I would refer to as a hobbyist lawyer, and really  
10 spent more time in the aviation part. Practicing law is a  
11 lot of work.

12 Q. Let's just focus on your flying career, just take us  
13 briefly through that at TWA from the time you, well, I guess  
14 we were talking about you were based in New York City. So  
15 from there?

16 A. I was based in New York, and at that point in time, I  
17 was then flying the 747, Lockheed 1011 as flight engineer,  
18 but we had a provision where they would allow us to be, they  
19 call it instantly qualified the first officers, they took the  
20 senior flight engineers and allowed you this option, so  
21 from month to month I would fly the 707 as a first officer,  
22 and I did that until I ultimately got a first officer bid, in  
23 St. Louis.

24 TWA just purchased some MD 80s, and I was in the  
25 first group, we got trained by McDonnell Douglas out on the

1 west coast. And I transferred to St. Louis at that time. It  
2 was rather ironic because the MEC office which had been in  
3 down town Manhattan also transferred to St. Louis about that  
4 time.

5 So I started doing some union work at the MEC  
6 level. We started something new called the grievance review  
7 board, and at the time TWA was getting an awful lot of  
8 grievances.

9 We had over 100 grievances outstanding and they  
10 were pouring in and they were all being pretty much  
11 arbitrarily denied at the first level so the grievance review  
12 board's function was to take the grievances and review them  
13 and study them and make a recommendation to either proceed to  
14 the next level which is called the system board, or recommend  
15 that the grievant withdraw the grievance.

16 Q. What year are you talking about now you got on this  
17 grievance board?

18 A. That would have been in the late seventies, early  
19 eighties, in that area there. I was working with ALPA  
20 attorney, Barbara Gumbel, who had just recently been hired by  
21 ALPA. She was probably the finest, one of the finest  
22 attorneys I have ever worked with.

23 Q. Captain Day, was that the first piece of union work that  
24 you got involved in?

25 A. Well, no, I had been grievance, local grievance chairman

1 in New York. That was my first bit of work at the MEC  
2 helpful level.

3 Q. In has been some testimony about what the grievance  
4 committee does. Can you tell us briefly what you were  
5 doing?

6 A. Well, the grievance committee, when I pilot feels like  
7 he or she is being mishandled, and the company is not  
8 handling them the way the collective bargaining agreement  
9 would say, for instance, they are calling them on their days  
10 off or doing other such things, they would try to call the  
11 company and complain and if they didn't get anywhere, then  
12 they would call a member of the grievance committee, and the  
13 grievance committee would send somebody in to try to get it  
14 worked out.

15 If it couldn't get worked out, there is a whole  
16 formal process you go through where you file a grievance  
17 within a certain amount of time and then you have a hearing  
18 before somebody, your chief pilots' local office, and they  
19 have so much time to either grant you your relief that you  
20 are seeking or to deny it and then you have another period of  
21 time, it is pretty much like a miniature court proceeding and  
22 then it continues on up until ultimately it would go before  
23 something called the system board of adjustment, which brings  
24 in either two persons from the company and two persons from  
25 the union to review it at the highest level, or they can also

1 bring in a fifth person which would be an arbitrator, and  
2 normally the arbitrator would make that decision.

3 Q. When you are doing grievance work, is there any  
4 particular dispute that sticks in your mind as something you  
5 are proud of or as particularly interesting that you can tell  
6 us?

7 A. Well, they are all pretty interesting to the grievant.

8 But no, I can't, I can't think of any specific  
9 ones. I am sure if I sat up here and thought about it a  
10 while, I would.

11 Q. Fair enough.

12 So that was your first bit of union work. What was  
13 the next thing, the grievance board?

14 A. The grievance review board then became the next step in  
15 the process, and that was something we had just worked out  
16 and negotiated into the collective bargaining agreement with  
17 the company. So that was something where, it was actually  
18 pretty innovative because we had our own database that we  
19 created, and we would actually go to the individual pilots  
20 and talk to them so they didn't feel like nothing was  
21 happening.

22 That was one of the problems, it was terribly  
23 frustrating from a pilots standpoint to go file a grievance  
24 and not here anything for a period of time and thinking that  
25 your union had left you in the cold.

1                   So part of it was a PR campaign and part of it was  
2 an informational type campaign where you would be gathering  
3 information.

4 Q.    All right. Moving forward, what was the next union job  
5 you had?

6 A.    Well, after the grievance procedure, I then would, this  
7 would have been in '94 -- well, no, I am going to back up a  
8 minute. About that time Carl Icahn came in and bought the  
9 airlines.

10                  We had gone through our first bankruptcy, and after  
11 Carl bought the airlines, there was a pretty big rift within  
12 the pilot group.

13                  ALPA had negotiated a contract in which we agreed  
14 to 28 percent pay concessions. That was what the pilots  
15 thought they had agreed to, only to find out after Carl came  
16 on board that that was 28 percent aggregate crew cost, which  
17 apparently, whoever negotiated the agreement didn't know  
18 what that meant because it would have been a 44 percent pay  
19 cut.

20                  So what happened was, there was a group of pilots,  
21 they didn't like ALPA any way, and they formed their own  
22 union. It was called the Airline Pilots Union, APU, for  
23 short, and they started a card campaign against ALPA to try  
24 to become the certified carrier -- representative for the  
25 carrier. And I ultimately got involved with them although I

1 was, initially, my sympathies laid there.

2 And then I became quite involved with them although  
3 I didn't hold any office.

4 THE COURT: Them meaning the APU?

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay.

7 A. Yes, sir. I got to the point I was maintaining the  
8 data base, they used to joke and say we had a better database  
9 than alpa today because we were sending cards out. Pilots  
10 are notorious for not providing information. They are pretty  
11 mobile.

12 At one point I finally decided I couldn't really  
13 justify being the member of two unions, and I resigned from  
14 ALPA, although I continued to pay dues. And we continued to  
15 try to collect cards and ultimately a year later, we got to  
16 the point where we had actually collected about 85 percent of  
17 the cards we needed to petition the National Mediation Board,  
18 but that wasn't enough, and after a year the cards start  
19 becoming stale, they have to be less than a year old.

20 So at that point, I made the decision that this  
21 wasn't going to work. Pilots had decided they could live  
22 with what they had and I decided to come back into ALPA and  
23 try to make the changes from within the union, so I parted  
24 with the group that ALPA used to refer to as the dissidents,  
25 and I came back into the union. At that point in time I

1 started doing local grievance work again, but in 1994 I ran  
2 for and was successful becoming the St. Louis LEC captain  
3 representative. At that level.

4 Q. That made you a member of the MEC, the Master Executive  
5 Council?

6 A. Yes. There was either nine or twelve members at that  
7 point in time. New York had two councils of three each, we  
8 had three pilots in Los Angeles, had three pilots, somewhere  
9 in their, Los Angeles, Los Angeles, eventually got closed and  
10 New York shrunk down to one council. During --

11 Q. How long did you serve as the captain rep in St. Louis?

12 A. The term is for two years. And it was an interesting  
13 term because that is when TWA decided to go through its  
14 second bankruptcy.

15 Q. Let me stop you right there. Were any TWA pilots  
16 furloughed in the first or second TWA bankruptcies?

17 A. I believe so. During the first one. But I am not 100  
18 percent positive.

19 Q. Okay. If you don't know --

20 A. I am not certain at all. We had something at one time  
21 called the phantom furlough. TWA had threatened to furlough  
22 200 pilots and ALPA immediately jumped in and said what can  
23 we do to prevent it, and we gave concessions and there was no  
24 furlough and there was always a suspicion that the furlough  
25 never was going to happen any way, but that is what -- that

1 was somewhere, I think that was around the first one but I  
2 can't say for sure.

3 Q. Before I interrupted you you were going to tell us  
4 something in connection with your MEC work in the second and  
5 the second bankruptcy?

6 A. Yes. As part of that the company came to us again for  
7 concessionary contract which seemed to be happening with  
8 regularity, and at that point, that was '94, I had been with  
9 the company for, oh, 17 years, and I developed a certain  
10 amount of skepticism.

11 Q. Skepticism about what?

12 A. Skepticism about the company being able to justify their  
13 position. It seemed to me that the pilots would roll over  
14 too easy, that was one of the reasons I wanted to be on the  
15 MEC. And a lot of times I felt like I was a lone vote, but  
16 we did get a concessionary contract, or working agreement,  
17 and I can remember to this day that an I think it is probably  
18 the finest concessionary agreement in the industry at the  
19 time.

20 We got such things, I remember the negotiating  
21 committee giving its report to the MEC and me telling them  
22 all right, if we are going to give a concessionary contract,  
23 let's clean up some of these horrible areas we got.

24 For instance, being on reserve means you are on  
25 call and you are guaranteed in those days, you were

1 guaranteed ten days off. Well, the other 20 or 21 days you  
2 were at the company's mercy and since an awful lot of pilots  
3 were commuters, you have to come up and either stay in a  
4 hotel at your own expense, or you have to come up and stay in  
5 a commuter pad, we call it, which is a half a dozen pilots  
6 sharing a one-bedroom apartment.

7 So I suggested let's change it. Let's go to 14  
8 days off. Let's change the whole concept, and I remember the  
9 negotiating chairman telling me that they will never buy it,  
10 Mike, they will never buy it.

11 Well, I said I am not going to sign off on this  
12 thing and of course they wanted our signatures because they  
13 were threatening to close the airlines down, and so on. So  
14 came back with 14 days off and all sorts of other innovative  
15 type things. It was quite a contract. But I remember the  
16 pressure of being up half the night with discussions going  
17 back and forth, and those days, Bill Compton who ultimately  
18 became the CEO of TWA was our Master Executive Council  
19 chairman, and --

20 Q. Let me interrupt you, Captain Day. How many terms did  
21 you serve on the MEC?

22 A. Just the one.

23 Q. And you told that story of some work you are personally  
24 proud of that you did. Do you remember the pilots at Eastern  
25 Airlines striking when you were a younger pilot?

1 A. Absolutely. I remember I remember it pretty well  
2 because when I started flying for TWA, I was making \$500 a  
3 month. That is what, for the first six months, living in New  
4 Jersey. Paying about 115 for an apartment. And it wasn't  
5 much after that that we got our pay increases, but still we  
6 weren't make ago whole lot of money, and the Eastern pilots  
7 went on strike, and as part of that strike ALPA National  
8 assessed all the pilots, including the TWA pilots. That is  
9 what you are supposed to do, you are supposed to support your  
10 fellow pilots when they go on strike. And we went for 24  
11 months, every month, sending a check in, it was about a  
12 hundred something dollars, it was big amount in those days  
13 and even though we grumbled we understood that those pilots  
14 were carrying the water. But they needed our support. That  
15 to me was my introduction to unionism.

16 Q. And you carried that forward in your own work, that  
17 principle?

18 A. I tried.

19 Q. Take us then to your next union job, if you can recall.  
20 We left, you were an MEC member in the mid nineties?

21 A. Yes, the next one, Barbara Gumbel referred to as a  
22 committee that didn't exist. It was called, affectionately  
23 called the dirty tricks committee.

24 Q. Who is Ms. Gumbel again?

25 A. She was our staff attorney, ALPA's staff attorney, based

1 out of St. Louis.

2 Q. Was she the contract administrator like?

3 A. Yes.

4 Q. We heard about Mr. Holtzman?

5 A. She was Mr. Holtzman's predecessor.

6 Q. Okay. And she had this, what did you call it?

7 A. Well, she called it the dirty tricks committee. We had  
8 been, our contract had been amenable for over two years. In  
9 other words, we felt we were working without a contract, and  
10 we were working with the old contract. And even though there  
11 was, you had certain rights, we understood, you know, that  
12 there was rights to strike and so on, that there was also  
13 other things that could be done, and there was a group put  
14 together, and we put together a play book, we called it, for  
15 the MEC chairman, and this was something, the MEC chairman  
16 could pull out and say okay, this week we are going to do  
17 this.

18 Q. Like what?

19 A. Well, I can remember one where he said, we are declaring  
20 this as LAW week, log book awareness week.

21 THE COURT: Law book?

22 A. Log book. Log book awareness.

23 THE COURT: I thought you said law book awareness.

24 A. Original was Law. L A W. Work by the law was the  
25 slogan.

1           When Bill set this up, well, I will give you an  
2 example. I was on layover down in Miami and we came out that  
3 morning for our flight. And I was flying on the MD 80, and I  
4 walked around to do a pre flight, we would alternate, the  
5 captain would do one, the first officer would do one, and  
6 there were a few drops of oil on the bottom of the engine  
7 cowls and I instructed the first officer to call maintenance  
8 and write up the oil leak and the maintenance foreman came  
9 running out and said that is normal. They all have a few  
10 drops of oil. If you write that up I have got to take the  
11 whole cowl up, and have an hour and a half delay.

12           Well, you can see where that was going. I told him  
13 if it is normal, then sign it off as normal. It really went  
14 into his lap.

15           So this kind of went on for a week and the theory  
16 was, yes, you are inconveniencing people, probably not as  
17 much as a strike, though, but the idea is to try to exercise  
18 some leverage against the company so that they will come back  
19 and negotiate with you. That would be one example.

20           I can tell you there was an awful lot of 10-11's  
21 that had windshields changed because the pilots claimed they  
22 couldn't see out of them as clearly as they should. Captains  
23 have a tremendous amount of authority with the airlines, and  
24 there is a gray issue, on, you can fly with an awful lot of  
25 things, at the captain's discretion on whether to fly with

1 them or not. The captain doesn't have to.

2 Q. This was the dirty tricks committee?

3 A. That was the dirty tricks committee.

4 Q. You were part of that committee?

5 A. I was part of that committee.

6 Q. Okay.

7 A. I guess I was always considered a bit of a rebel, and I  
8 would get dragged into these things.

9 Q. The next committee.

10 A. The next committee I served on was called the scenarios  
11 committee.

12 Q. Okay. This, what year are we in now, about?

13 A. I would say we were into the later nineties.

14 Q. All right.

15 A. At that point, the handwriting was on the wall that most  
16 of the airlines were starting to look at mergers. So we  
17 wanted to be prepared for it. So one of the things we did  
18 was myself and another pilot named John Berlin went out and  
19 started interviewing potential merger attorneys, and that was  
20 my first introduction to meeting Roland Wilder. But then a  
21 committee was set up to start studying this in more detail,  
22 so the first thing that came along was potential merger with  
23 America West, and of course it was all hush-hush, because  
24 none of this was supposed to be public information. So my  
25 job was to interact with America West, and exchange seniority

1 lists and start trying to look at those.

2 THE COURT: What was the union for America West?

3 THE WITNESS: That was ALPA.

4 THE COURT: So it was an ALPA to ALPA?

5 A. Yes, sir.

6 THE COURT: That is a lot different than an ALPA to  
7 non-ALPA.

8 THE WITNESS: That is a piece of cake.

9 THE COURT: Because everybody is on the same side?.

10 A. Yes, sir.

11 THE COURT: Go ahead.

12 Q. Actually, when ALPA --

13 THE COURT: No leading questions. I can ask  
14 leading questions.

15 Q. We will get to that later.

16 A. Okay.

17 Q. The scenarios committee?

18 A. Okay. But the America West thing never materialized,  
19 although they did take our -- it is funny, our MEC chairman  
20 always rise to different positions. Joe Kronik was the MEC  
21 chairman later on and he ultimately wound up becoming vice  
22 president of flight operations for America West.

23 But the scenarios committee, after that, evolved  
24 into a committee to start dealing with Bill Compton. Bill  
25 Compton by now had become the president or CEO of TWA, and

1 the scenarios committee was supposed to be looking at all  
2 these different possibilities that perhaps the company wasn't  
3 being aggressive enough, as far as looking at potential  
4 mergers and/or other types of relationships.

5 Q. Okay. So what work did you do on that committee?

6 A. Well, I was one of the senior advisors on it, I guess  
7 you could say. We would just basically meet and try to come  
8 up with different ideas. It was more of a think tank than  
9 anything else.

10 Q. And going forward, when did you leave the scenarios  
11 committee and go join another committee, if you did?

12 A. Well, at that point I was back flying out of New York on  
13 the 7-6 and I was doing the check airman work.

14 THE COURT: What is that?

15 THE WITNESS: Well, somebody has to give the pilots  
16 their annual line checks.

17 THE COURT: You were checking out pilots.

18 THE WITNESS: Checking them out, giving the line  
19 instruction on transitions and so on, check rides and that  
20 type of thing.

21 THE COURT: All right.

22 A. So what happened after that, I guess, is the start of  
23 what this is sort of about. In January of '01 is when all of  
24 a sudden we all found out that American wanted to buy TWA.

25 Q. Okay. And what union work did you do first?

1                   THE COURT: How did you find that out?

2 A. I got a telephone call from another pilot one morning,  
3 Judge. At home.

4                   THE COURT: Another TWA pilot?

5 A. Yes, sir. Saying did you hear the news? So of course  
6 we were all pretty excited about it, because American was a  
7 very large, stable airlines. So initially I wasn't doing  
8 anything, I was quite happy doing my check airman duties and  
9 flying to Kona or taking a trip to Cairo or whatever. And  
10 then in February I got a call and asked if I would come join  
11 the -- to become the ALPA representative on the, see if I can  
12 get this terminology right -- the TWA bankruptcy, unsecured  
13 creditors committee.

14 Q. What did that job involve?

15 A. Well, there was six persons on that committee, and at  
16 least twice as many attorneys in there, too. And that  
17 involved going between, well, where I was living in Florida  
18 and up to Wilmington, up to New York, and back to St. Louis,  
19 and meeting with this group, and the group was comprised of  
20 myself and another labor representative from the IAM which  
21 basically represented most of the rest of the TWA employees  
22 and there were two from the unsecured bond holders and then  
23 there was two other ones, one representative from Papsy  
24 (phonetic), and the other one from Pratt and Whitney.

25                   THE COURT: What was the unions, I, unsecured debt,

1 I know it was ALPA's unsecured debt.

2 A. Our wages beyond what the bankruptcy court would give  
3 priority to. As I understood it.

4 So we would meet in Delaware and I would have two  
5 attorneys, Steve Tumblin, then we had a local counsel in  
6 Manhattan, and we would all meet down in Delaware, and the  
7 idea was that we were supposed to try to get the best deal  
8 for the unsecured creditors.

9 Q. The bankruptcy court was in Delaware?

10 A. The bankruptcy court was in Delaware, Wilmington,  
11 Delaware.

12 So as part of that, it was --

13 THE COURT: Was the filing before American signed  
14 the deal or after, signed the deal to buy --

15 A. I believe that the filing was right after. They didn't  
16 file it and then go look for American.

17 THE COURT: In other words, it was the other way  
18 around, American signs the deal and then they go --

19 A. As part of the deal we had to go through this bankruptcy  
20 and shed these debts.

21 THE COURT: Okay.

22 A. And one of those debts was something called the Karabu.

23 MR. PRESS: When Mr. Day responds to the Judge, can  
24 you all hear him?

25 THE JURORS: Yes.

1 A. I will try to talk louder.

2 One of the debts was something called the Karabu  
3 arrangement which was a, I was going to say a hangover, a  
4 legacy from Carl Icahn. And this was something that gave  
5 Carl Icahn a preference to buy all of these very cheap  
6 tickets. As a matter of fact, he had a website I think,  
7 original cheap tickets website. And according to Bill  
8 Compton it was draining us royally. I had actually written  
9 Bill Compton a private memo one time and said why don't you  
10 go through bankruptcy on your own before this. We can't do  
11 that.

12 Our attorneys say there is no way we can get rid of  
13 the Karabu agreement. Well, that was part of the deal with  
14 American, was to get rid of this agreement. So Carl Icahn  
15 still had a big interest in TWA. And --

16 Q. You mean stock ownership? Is that what you mean by  
17 interest?

18 A. No, I mean this agreement where he was guaranteed all of  
19 these tickets at these ridiculously low rates.

20 So one day, one of the, one of the unsecured bond  
21 holder representatives, Mo Meeks, I believe his name was,  
22 said, oh I just got a call from Carl last night and he has  
23 got a much better deal for us.

24 Well, that perked my ears up because Carl Icahn was  
25 never really considered a friend of labor at that point in

1 time. So I began listening up, he says Carl wants to come in  
2 and tell us his deal.

3 I said no, no, we don't want Carl in here, the  
4 whole meeting. Let him send his proposal in in writing, or  
5 send his attorney, whatever.

6 Well, the next thing I know, Carl Icahn is walking  
7 in to our unsecured creditors meeting with his attorney, and  
8 the first thing he is doing is saying I need to know, are you  
9 boys with me or not? And Mo Meeks pipes up, we are all with  
10 you, Carl. We are all with you. And he looks across the  
11 room at me, and, no, I need to know where he is at.

12 Well, I didn't know Carl Icahn had any idea who I  
13 was. And he says I want to know how you are going to vote.  
14 And I said, well, Mr. Icahn, I am going to vote in the  
15 interest of the unsecured creditors. No, no, I really want  
16 to know how you are going to vote. I repeated it again. He  
17 said I want to know ALPA's position.

18 I said, well, then you are going to have to talk to  
19 our MEC chairman, at that point in time. He said no, I want  
20 you to tell me. Well, if I was sitting where you are  
21 sitting, I would want to know, too, but that is my answer.  
22 He just looked at me, burst out laughing, didn't bother me  
23 any more.

24 He was a pretty intimidating character, and he was,  
25 he was serious about coming in and competing with American,

1 but at that point in time we didn't want anything to do with  
2 Carl Icahn. We thought American was the direction to go.

3 Q. And that is the direction it did go?

4 A. That is the direction it did go.

5 Q. How long did you serve on this creditors committee in  
6 the bankruptcy court?

7 A. I started that in the beginning of February and the next  
8 thing I knew, in March, I got another telephone call, and Bud  
9 Bensel, who was the chairman of the merger committee,  
10 developed a medical problem, and they asked if I would come  
11 takeover his position, and I stupidly accepted.

12 So that was in early to mid March.

13 THE COURT: Now, the merger committee was not  
14 merging the two companies, it was merging the pilot groups,  
15 right?

16 THE WITNESS: That's correct.

17 THE COURT: In other words --

18 A. Yes, the merger, as a matter of fact, it is even more  
19 confusing than that because the merger, we called it the TWA  
20 merger committee. That is what I was chairman of. And the  
21 APA, the American pilots group, called theirs the acquisition  
22 and something else committee. But we were supposed to merge,  
23 to integrate the two seniority lists together.

24 THE COURT: You weren't dealing with the business  
25 side of the American TWA merger?

1 THE WITNESS: No, sir.

2 THE COURT: You were dealing with the ALPA group  
3 and a nonALPA group?

4 THE WITNESS: Yes, sir, that is exactly right.

5 Q. We have heard from Sean Clarke who was a committee  
6 member of yours, right?

7 A. Sean was the junior most member on the committee.

8 Q. And you became, what was your position on the  
9 committee?

10 A. I became the chairman.

11 Q. Which meant what as far as your job responsibilities as  
12 compared to people that weren't the chairman?

13 A. Well, for one thing I was the baby sitter. I had to  
14 keep, you get five pilots together, you are going to get five  
15 different opinions. And obviously we have, we had a diverse  
16 group on there. Now, we weren't supposed to just be  
17 representing our own seniority group, and I was --

18 Q. Remind the jury, you said five, if you get five pilots  
19 you are going to give five opinions. How many committee  
20 members were there?

21 A. Five.

22 Q. Okay.

23 A. And, but we were supposed to be representing all of the  
24 pilots. But obviously you are going to look at things  
25 differently and understand them differently from your own

1 seniority's perspective, and Sean was, I remember Sean and  
2 John Swanson, who was the next senior person, he was a former  
3 Ozark pilot, and he and Sean would go at it left and right,  
4 and I would have to remind them that we are working on this  
5 together.

6 Q. As far as interfacing with the American pilot committee,  
7 did the chairman have extra responsibilities?

8 THE COURT: You need a premise to that. He can  
9 talk about what that meant and who he was interfacing with.

10  
11 A. Well, the first --

12 THE COURT: Let him ask the question.

13 Q. In your own words, tell the jury what your committee's  
14 job was?

15 A. We had to, first of all, formulate a plan of integration  
16 between the two pilot groups. We had approximately 2,500  
17 pilots. They had 11,000 plus pilots. We had to figure out  
18 how we were going to merge these two together. And my job as  
19 chairman was to oversee it and do all the administrative part  
20 of it, and interact more with the MEC and with our counsel  
21 counsel, and advisors.

22 Q. And as chairman, did you have any extra responsibilities  
23 from normal committee members, the other four committee  
24 members, I should say?

25 A. Well, sure.

1 Q. What were they?

2 A. I was the one who would have to write the letters and  
3 set up the meetings between us and the American pilot group,  
4 and --

5 THE COURT: Did the APA have their own sort of  
6 counterpart committee to your committee?

7 A. Yes, sir, and I think they had about seven members.

8 THE COURT: That would be Allied Pilots  
9 Association.

10 A. The Allied Pilots Association, APA.

11 THE COURT: They had a group that was kind of like  
12 your group.

13 A. Yes, sir.

14 THE COURT: That you were interacting with?

15 A. We would schedule meetings to meet and try to resolve  
16 our issues. Now, I came in and they already had several  
17 meetings.

18 Q. Let me interrupt you. When did you take over as  
19 chairman of the TWA merger committee?

20 A. March 8 sticks in my mind is when --

21 THE COURT: 2001?

22 A. In 2001, is when the MEC passed the resolution  
23 appointing me as chairman of that committee.

24 Q. And that is how that happened, some sort of election?  
25 MEC, the MEC voted and approved your position?

1 A. That's correct.

2 Q. All right. And that was in, let's say, March 8, 2001?

3 A. Yes.

4 Q. What was the first thing you did, first of all, did you  
5 have any involvement with that committee before you were  
6 elected chairman?

7 A. No.

8 THE COURT: But the committee had functioned before  
9 you were chairman? In other words, had existed.

10 THE WITNESS: Yes, sir.

11 THE COURT: And doing things.

12 A. Yes, sir. Bud Bensel was my predecessor.

13 THE COURT: And he was the chairman.

14 A. He was the chairman.

15 Q. What did you do when you were elected chairman?

16 A. The first thing I did was try to get spun up on merger  
17 law, for what I would need to know. ALPA's merger policy,  
18 and where we were at between the two committees. So I had to  
19 talk to my various members and get all the paperwork that had  
20 gone out between them, and there studies and what it is we  
21 were trying to do.

22 Q. You mentioned you wanted to ramp up to speed on merger  
23 law. Was there somebody in particular you looked to for  
24 advice on?

25 A. Absolutely.

1 Q. Who was that?

2 A. That was Roland Wilder who, I am convinced Roland is the  
3 only reason we got what we did get out of this thing, was  
4 Roland's -- Roland is probably, I think, the finest merger  
5 attorney out there. And he is well respected.

6 As a matter of fact, Ed White, who was their, my  
7 counterpart on the APA, had mentioned that I guess they had  
8 tried to hire Roland. But we got to him first. So he was  
9 extremely well respected, and Roland did what he could to  
10 spin me up, and of course.

11 Q. And in this ramping up, getting yourself up to speed  
12 mode, what did you learn in particular from Mr. Wilder that  
13 sticks in your mind?

14 A. Well, that there were different types of merger. Before  
15 deregulation there was one way that was called date of hire,  
16 and that is pretty simple. You simply take the two pilot  
17 groups and create a new seniority list based on when each  
18 pilot was hired by their respective company. And there is  
19 another way called ratioing them in, where you either ratio  
20 the whole group in, if for instance you have got a thousand  
21 pilots on one and five on the other one, you ratio them in,  
22 one pilots for five pilots, or you could do it with all sorts  
23 of iterations of the two of them. Do it within categories,  
24 ratio captains in on one group, and then I learned that there  
25 was ways to protect one group by using restrictions from

1 flying the other company's airplanes for some period of time,  
2 we had apparently done that at TWA, with Ozark.

3 Q. Describe that, Ozark, what are you talking about?

4 A. Well, Carl Icahn, when he owned TWA, when it was still a  
5 private company at that time, I believe, decided he was going  
6 to buy Ozark, to strengthen our position in St. Louis. So he  
7 purchased the airlines, and Ozark, we then had the same  
8 problem there.

9 Now, I wasn't part of that merger operation, but  
10 that was ALPA, that was ALPA to ALPA, and under ALPA to ALPA,  
11 basically it says the two pilot groups, if they can't agree,  
12 then they would go to arbitration. But they did ultimately  
13 come to an agreement and signed off between the two of them.

14 Q. Okay. I just wanted you to describe what Ozark airlines  
15 were and why you were mentioning it in your testimony?

16 A. Okay. And using it as an example, that was a date of  
17 hire merger where they took the two groups and that is how  
18 they were factored in. But as a result of that, there was a  
19 large group of Ozark captains who would have immediately  
20 become first officers because TWA was a very senior airlines,  
21 and they put in what they call fences and restrictions in  
22 there, so that for a period of two to three years everybody  
23 would continue to fly their current position.

24 Q. Okay. Let's get back to Mr. Wilder's advice to you when  
25 you were again, in your ramping up stage on the merger

1 committee?

2 A. Yes.

3 Q. Is there anything else that you can recall that he said  
4 that was important to you at the time?

5 A. Well, at the time we had in our collective bargaining  
6 agreement, section 1 we had what was called scope, which  
7 offered us protection and said in case of an acquisition or a  
8 merger, whatever, we were going to be covered under certain  
9 processes to assure a fair and equitable integration.

10 THE COURT: But the heart of that was at the end of  
11 the day there would be an independent arbitrator deciding the  
12 dispute if the parties couldn't resolve it themselves. That  
13 was it in effect.

14 THE WITNESS: That summarizes it.

15 THE COURT: The Mohawk Allegheny rights.

16 THE WITNESS: That is in effect what that really  
17 meant. You could negotiate, but if you couldn't agree you  
18 would have a third party, independent arbitrator, to come in  
19 and say this is what is fair. This is what we are going to  
20 do.

21 THE WITNESS: Yes, sir. That is what I was going  
22 to say, you took the words out of my mouth. But that  
23 simplifies it just the way I would have described it. Thank  
24 you.

25 THE COURT: Now go to the APA contract.

1 A. Well, that is where the problem came in.

2 Q. Right.

3 A. We had this provision in our collective bargaining  
4 agreement, but apparently the APA, in their collective  
5 bargaining agreement, had a provision that said in case of a  
6 merger, pilots would go to the bottom of their list.

7 THE COURT: Is that the so-called staple job?

8 THE WITNESS: That is the staple job. That is  
9 their green book. Yes, sir.

10 THE COURT: Would that be in part because American,  
11 being so strong, relatively at the time, was likely to be the  
12 acquirer of TWA and a lot of smaller airlines were likely to  
13 be the acquired ones?

14 THE WITNESS: Also because they were an independent  
15 union and they could set up their own rules, whereas under  
16 ALPA, if he, if it had been ALPA to ALPA.

17 THE COURT: You had 60 airlines or something?

18 A. Right. 70,000 pilots.

19 Q. As ALPA members you all agreed to be bound by the same  
20 merger policy, no matter what airline you flew for?

21 A. Yes.

22 Q. But the American pilots were represented by their own  
23 company union, and didn't have that?

24 A. So we had an ALPA to non-ALPA merger in this case.

25 Q. Right. And Roland was explaining what to you about

1 that? I said Roland. Mr. Wilder?

2 A. Well, Roland, Mr. Wilder, he felt as long as we had a  
3 process, we had a good chance at having a fair and equitable  
4 integration.

5 Q. What do you mean, process?

6 A. Well, either, as the Judge has said, arbitration, or  
7 something along that line. But not stapled.

8 Q. Were you led to believe that that was something that Mr.  
9 Wilder was seeking to achieve, that when he took over as  
10 chairman?

11 A. Absolutely.

12 Q. Okay.

13 THE COURT: I am sorry. When he took over as  
14 counsel.

15 Q. No, took over as merger committee chairman?

16 THE COURT: Mr. Wilder.

17 Q. No?

18 THE COURT: I thought you said Wilder became  
19 chairman. I got you.

20 Q. What did Mr. Wilder say about this process agreement.  
21 Let's do it that way.

22 A. I felt it was essential. Otherwise, I think his phrase  
23 was we would be dancing naked in the streets.

24 Q. When you took over as merger committee chairman, Captain  
25 Day, did you learn whether or not there had been any

1 negotiations between the two pilot committees?

2 A. Yes. There had.

3 Q. And did you come to understand what the status of the  
4 negotiation was?

5 A. Yes.

6 Q. Without telling us --

7 MR. PRESS: Judge, this would be a perfect time to  
8 break.

9 THE COURT: Okay. It is two o'clock exactly on the  
10 head. Okay.

11 Ladies and gentlemen, we had a busy day today, a  
12 full day, for which you can thank the lawyers for keeping the  
13 case moving. And please do not discuss the case among  
14 yourselves. Do not discuss the case with family, friends or  
15 loved ones. Keep an open mind until you have heard all the  
16 evidence.

17 I might report you can never be sure of these  
18 things, it looks like our initial estimate of the length of  
19 the trial is going to be somewhat shorter than we, a little  
20 shorter than we thought. I think that probably some number  
21 of days after the 4th of July we will be finished with the  
22 case, which is somewhat shorter than we had anticipated. I  
23 guess that falls in the category of good news. I think the  
24 plaintiffs will be done tomorrow, am I right?

25 MR. PRESS: We will be finished tomorrow, Judge.

1                   THE COURT: And of course, as you know, it becomes  
2 the defendant's turn to put its case on. So the attorneys  
3 are moving along. That is a good thing.

4                   Have a very safe trip home and a safe in tomorrow  
5 morning at 8:30.

6                   (The jury leaves the courtroom.)

7                   THE COURT: Thank you, Captain. You can step down.

8                   Everyone please be seated.

9                   Mr. Katz, you rise.

10                  MR. KATZ: Yes, your Honor. In the spirit of  
11 moving things along smartly, there are some videos that ALPA  
12 would like to show as part of its case, and may arise as soon  
13 as tomorrow.

14                  We discussed it on Monday, to some extent, and with  
15 regard to Jeffrey Brundage's video, this is a situation where  
16 plaintiffs did not designate any portions of Mr. Brundage's  
17 deposition to show as part of their case. However, ALPA did  
18 designate plaintiffs. Plaintiffs had objection and counter  
19 designations and we have color coded in the fashion to which  
20 you have been accustomed the --

21                  THE COURT: Give it to me.

22                  MR. KATZ: -- the designations and counter  
23 designations and the objections and I have a copy of the same  
24 thing for opposing counsel.

25                  We would like to, I think we will need to show that

1 tomorrow.

2 THE COURT: Okay. Mr. Press, Mr. Jacobson.

3 MR. PRESS: Ms. Rodriguez will be handling this.

4 THE COURT: I don't know who will do there, but I  
5 would go over this if you can this afternoon and if you could  
6 email me, if there is any objections that you have that are  
7 not on here. Okay. So we will make sure, tonight I get as  
8 many of the objections I know I don't want to see once  
9 tomorrow morning I haven't seen. It is not that long.

10 MR. KATZ: No, I think it is use pages long.

11 THE COURT: It looks like a rather short one. It  
12 should be, to check out the objections shouldn't be, he has  
13 them marked here in yellow, the objections just make sure for  
14 whatever reason, so nothing is lost in translation.

15 MR. PRESS: We will do that.

16 MR. KATZ: Your Honor, we talked about Mr. Babbitt,  
17 and he is a case where plaintiffs did designate, we counter  
18 designated and there are objections.

19 THE COURT: Well, the key now, he is not offering  
20 those.

21 MR. KATZ: We are going to offer Babbitt.

22 THE COURT: The question is whether you offer it  
23 and what does he object to and what does he ask for.

24 MR. KATZ: Precisely. We are prepared to stick  
25 with what is in the joint pretrial order unless the parties

1 have some different position on that.

2 THE COURT: Do I have Babbitt, though? I don't  
3 recall seeing the transcript itself.

4 MR. KATZ: I don't think you have, you don't have  
5 the transcript itself. We are happy to supply that to you.

6 THE COURT: I think I have exhibit D.

7 MR. KATZ: You have exhibit D. His items are on  
8 page 29 to 30 of exhibit D. Are the Babbitt designations and  
9 counter designations.

10 THE COURT: I have the exhibit here. What I need  
11 is the transcript itself.

12 MR. KATZ: We can provide that to you this  
13 afternoon.

14 THE COURT: You are not going to get to Babbitt  
15 tomorrow, are you?

16 MR. KATZ: I am not sure. What do you think?

17 MR. FRAM: Unlikely, your Honor.

18 THE COURT: I think the key thing is, Thursday is  
19 coming up, and it is a three-day weekend, put together as  
20 many of these transcripts as you can, get them printed up,  
21 and so we, the weekend is a good time for me to work on them.

22 MR. KATZ: There is one final item related to that,  
23 not exactly the same. We have an exhibit that is an ALPA  
24 exhibit, D 290, which is a transcript of Compton's testimony  
25 before Congressional committee, a Senate committee on

1 February 7, 2001. And we were like.

2 THE COURT: Compton's testimony before the Senate?

3 MR. KATZ: Yes, sir.

4 THE COURT: On what issue?

5 MR. KATZ: He was testifying about the American TWA  
6 acquisition before the Senate Commerce Committee. And in the  
7 course of that testimony he talked about TWA's situation and  
8 the fact that it needed the transaction to survive and that  
9 he had gone to all the other airlines and tried to get a  
10 merger and was only met with one offer and that was the one  
11 from American. In the course of discovery, the plaintiffs  
12 noticed the deposition of Bill Compton, and we suggested,  
13 this testimony should be used in lieu of having him appear  
14 live at trial. And the plaintiffs agreed to that so the  
15 deposition --

16 THE COURT: The last guy that refused to go to a  
17 deposition was Howard Hughes, and that went to the United  
18 States Supreme Court.

19 MR. KATZ: And they said he had to be deposed?

20 THE COURT: No. They sanctioned him millions and  
21 millions of dollars, and I think they reversed that sanction.  
22 But go ahead.

23 MR. KATZ: Mr. Compton was prepared to testify at  
24 his deposition, but because the parties stipulated that we  
25 could use the Senate tell instead --

1 THE COURT: Where is that stipulation embodied?

2 MR. KATZ: It is embodied in an exchange of emails.

3 THE COURT: Let me ask you, Mr. Press, or anybody,  
4 whether is your position on that?

5 MR. PRESS: We did have that discussion during the  
6 discovery phase of this case, but now we are in trial and you  
7 have made some rulings on Sherry Cooper that I think apply  
8 equally with Bill Compton. His testimony is no different in  
9 substance from hers other than he has a different conclusion.

10 THE COURT: Well, big difference. That is not  
11 exactly --

12 MR. PRESS: He was not subject to cross  
13 examination. He wants to show a video of this man  
14 testifying. It is hearsay. It lacks foundation, and it is  
15 opinion testimony, in our opinion.

16 MR. KATZ: Here is the exchange of emails with  
17 months Rodriguez.

18 MR. PRESS: Judge, before you read that, please  
19 recall that we had a stipulation on Steve Rautenberg as well  
20 during the same time period that was, he was allowed to get  
21 out of.

22 MR. KATZ: There was no stipulation on Mr.  
23 Rautenberg. This was an exchange of emails, it was about --

24 THE COURT: I am not going to read it now but I  
25 will look at it.

1 MR. KATZ: Fine.

2 THE COURT: So.

3 MR. KATZ: We would like to show.

4 THE COURT: Mr. Press, you were taking the position  
5 that they can't show it.

6 MR. PRESS: I am. It is irrelevant.

7 THE COURT: I just want to know. And your position  
8 is it is like, you know, his opinion as to the.

9 MR. PRESS: The viability of the airline basically.

10 THE COURT: Well, there is a difference between  
11 saying I shopped the airline everywhere and only got one  
12 offer and saying it wasn't viable.

13 MR. PRESS: That is not the substance of the man's  
14 testimony.

15 MR. KATZ: We have excerpted parts of the  
16 testimony. It is a short excerpt.

17 THE COURT: How do I know --

18 MR. KATZ: We will submit to you, your Honor, the  
19 portions of the testimony that we want to --

20 THE COURT: This will not be tomorrow.

21 MR. KATZ: We can submit it this afternoon.

22 THE COURT: Remember, I am leaving in 20 minutes.

23 MR. KATZ: We don't need it tomorrow.

24 THE COURT: All right. So you will get me,  
25 tomorrow you will get me the transcript of Mr. Compton, what

1 you want to play of Mr. Compton.

2 MR. KATZ: Yes, your Honor.

3 MS. RODRIGUEZ: Your Honor, this letter, this email  
4 maintains that.

5 THE COURT: What are you talking about?

6 MS. RODRIGUEZ: Mr. Katz handed me a compilation of  
7 email exchanges from 2008.

8 THE COURT: Dealing with Compton.

9 MS. RODRIGUEZ: In which you said we will permit  
10 plaintiffs to retain their potential objections to Compton's  
11 potential objections, to Compton's testimony in Congress --

12 THE COURT: I have to look at it. I would rather  
13 look at it at the same time that we are looking at what it  
14 is they want to play of Compton. Mr. Press pointed out to  
15 me, and I agree with him, that defendant may open the door,  
16 and I may decide to let in stuff, you know, to let in by  
17 rebuttal, I think by Ms. Cooper.

18 MS. RODRIGUEZ: Sherry Cooper.

19 THE COURT: Play Ms. Cooper's portions of her  
20 deposition, et cetera, as rebuttal. I am going to see. I  
21 just don't, I am going to see where it goes.

22 MR. PRESS: Okay, that is great.

23 THE COURT: Try to get me --

24 MR. KATZ: Thank you, your Honor.

25 THE COURT: Try to get me Mr. Compton's stuff. The

1 weekend is the best, during the week I don't have a whole lot  
2 of time between leaving court and medical treatment, and, you  
3 know, getting, the weekend is a good time for me.

4 As much as you can get to me for the weekend is  
5 great.

6 Anything else.

7 MR. PRESS: No, not from the plaintiffs.

8 MR. KATZ: No, thank you, your Honor.

9 THE COURT: Okay. Thank you very much.

10 (Adjourned at 2:10 p.m.)

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I n d e x.

MICHAEL DAY, SWORN.

### Direct Examination

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